

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**V.M., Appellant**

**and**

**SOCIAL SECURITY ADMINISTRATION,  
Greensboro, NC, Employer**

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**Docket No. 10-1056  
Issued: December 16, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 8, 2010 appellant filed a timely appeal from a February 11, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established an employment-related disability commencing September 24, 2009.

**FACTUAL HISTORY**

On January 8, 2009 appellant, then a 58-year-old claims representative, filed an occupational disease claim (Form CA-2) alleging that she sustained arthritis of the left middle and index fingers and right middle and ring fingers as a result of her federal employment. She indicated that she previously had right thumb surgery. The reverse of the claim form indicated that appellant had stopped work on December 18, 2008. A note dated February 19, 2009 from

Dr. Zhongyu Li, an orthopedic surgeon, indicated that appellant could return to full duty on March 2, 2009.

By decision dated March 25, 2009, the Office denied the claim for compensation on the grounds that the medical evidence was insufficient to establish the claim. In a decision dated June 3, 2009, an Office hearing representative remanded the case for a second opinion examination.

In a report dated August 6, 2009, Dr. Karl Bolstad, an orthopedic surgeon selected as a second opinion examiner, provided a history and results on examination. He noted that appellant had carpal tunnel surgeries and a resection arthroplasty of the right thumb. Dr. Bolstad stated that appellant had good results from the surgeries, with some osteoarthritis at the base of the left thumb and interphalangeal joints of most of her fingers, with triggering of two fingers in each hand. He opined that, while the osteoarthritis was not directly caused by work, but appellant's work probably increased the pain and the finger triggering was aggravated by work. Dr. Bolstad stated that the aggravation was temporary and would cease when appellant no longer needed to use her hand extensively at work.

On August 18, 2009 the Office advised appellant that her claim was accepted for temporary aggravation of osteoarthritis of the fingers of both hands and base of left thumb, and temporary aggravation of trigger fingers of left index and middle, and right middle and ring fingers. Appellant was advised to claim any wage-loss compensation using a Form CA-7 claim for compensation.

In a CA-7 form dated September 28, 2009, appellant claimed compensation commencing September 24, 2009. She submitted a September 24, 2009 report from Dr. Beth Hodges, a family practitioner, who stated that appellant wanted four to six weeks off work due to her hand pain and trigger fingers. Dr. Hodges reported bilateral decreased grip strength and multiple trigger fingers. She stated that appellant would be given four weeks off to "rest her hands, which can be helpful in trigger fingers."

In a report dated October 21, 2009, Dr. Dominic McKinley, an orthopedic surgeon, noted that appellant worked as a claims representative, which required six to seven hours of data entry. He noted that appellant had been taken off work by Dr. Hodges and appellant was hoping to be kept out of work as she felt she was unable to perform her job duties. Dr. McKinley reported that appellant had degenerative changes in the proximal and distal interphalangeal joints consistent with arthritic changes. With respect to neurological examination, he noted slightly diminished grip strength with normal pinch, finger abduction and thumb extension strength. Dr. McKinley diagnosed chronic bilateral hand pain with "multi-factoral etiology" including osteoarthritis and trigger fingers. He opined that work would exacerbate her symptoms, and he recommended hand therapy, work conditioning and a functional capacity evaluation (FCE). Dr. McKinley indicated that appellant's return to work was pending the work conditioning and FCE.

In a decision dated November 18, 2009, the Office denied the claim for compensation commencing September 24, 2009. It found the medical evidence was insufficient to establish the claim.

Appellant requested reconsideration and submitted additional evidence. In a report dated December 15, 2009, Dr. McKinley stated that appellant reported triggering of the fingers, and although she had gotten better she was still concerned that she could not return to work without exacerbating the triggering symptoms. He noted that he was not able to recreate the triggering in the Office. Dr. McKinley stated that he had taken appellant off work not only for her hand pain but because she had functional limitations with the finger triggering as she used her hands more. He further stated, “Not only does this cause pain, but affects her work. Apparently, from a report, this worsens the more she uses her hands.” Dr. McKinley recommended that appellant remain off work until an FCE was performed.

By decision dated February 11, 2010, the Office reviewed the case on its merits and denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>3</sup>

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>4</sup> Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>5</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>4</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

## **ANALYSIS**

In the present case, the Office accepted a temporary aggravation of osteoarthritis in the fingers and left thumb, and a temporary aggravation of trigger fingers in the left middle and index, and right middle and ring fingers. Appellant claimed compensation as of September 24, 2009, and it is her burden of proof to establish the claimed period of employment-related disability.

In determining whether appellant has met her burden of proof, the Board looks to such factors as whether there are objective findings, a thorough understanding of the job duties by the physician, a firm diagnosis and a rationalized, unequivocal opinion that appellant was disabled due to the employment injury for the period claimed.<sup>7</sup> Appellant was seen by Dr. Hodges on September 24, 2009, but her report is of limited probative value to the issue presented. Dr. Hodges did not discuss appellant's work duties, referred only briefly to physical findings, did not provide a firm diagnosis or a rationalized medical opinion regarding an employment-related disability. The Board finds the September 24, 2009 report is not sufficient to establish an employment-related disability commencing on that date.

On October 21, 2009 Dr. McKinley treated appellant and his report of that date does provide more relevant details. He briefly noted that appellant's job involved data entry and he provided physical examination findings. Dr. McKinley does not though, provide, a clear and unambiguous opinion relating any disability to the employment injury. In his October 21 and December 15, 2009 reports, he did not specifically discuss causal relationship with employment. Dr. McKinley noted a "multi-factoral etiology" for hand pain, without explaining whether he felt the conditions were causally related to the employment duties. The accepted conditions were temporary aggravations of osteoarthritis and trigger fingers, and there must be an opinion that the current conditions are employment related and a reasoned opinion that the conditions caused disability for work. In the December 15, 2009 report, Dr. McKinley suggested that trigger fingers were causing some functional limitation, but he also noted that appellant was better and he could not recreate a trigger finger on examination. It is not clear whether his indication that appellant should be off work was based on fear of a future exacerbation. The possibility of a future injury does not constitute an injury under the Act and therefore no compensation can be paid for such a possibility.<sup>8</sup>

It is, as noted above, appellant's burden of proof to submit the necessary medical evidence to establish the claimed period of disability. The record does not contain a rationalized medical opinion based on a complete background that is sufficient to meet his burden of proof in this case.

## **CONCLUSION**

The Board finds appellant did not meet her burden of proof to establish an employment-related disability commencing September 24, 2009.

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<sup>7</sup> See *L.D.*, 61 ECAB \_\_\_\_ (Docket No. 09-1503, issued April 15, 2010).

<sup>8</sup> *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 11, 2010 and November 18, 2009 are affirmed.

Issued: December 16, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board